Annex on Negotiations on Basic Telecommunications

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:
   a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,
   b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member’s Schedule.

Bibliography


Documents

Council for Trade in Services, Telecommunications Services, Background Note by the Secretariat, S/C/W/74, 8 December 1998.

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A. Background

Even towards the conclusion of the Uruguay Round, negotiations on basic telecommunications remained in stalemate. Even though the term “basic telecommunications” is not explicitly defined in the GATS, it is generally understood to include the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer’s information. Regarding the proper regulatory framework for these basic telecommunications, there were great differences between the US on the one hand, and the EC, Canada and Japan on the other. Even though the US pushed for liberalization in the basic telecommunications sector, the US was unwilling to grant full most-favoured-nation (MFN) treatment to other Members unless they agreed to bind themselves to full market access and national treatment in the sector. At the same time, many Members recognized that the potential of the basic telecommunications market could be enormous,

1 Mathew, 53.
2 Council for Trade in Services, Telecommunications Services, Background Note by the Secretariat, S/C/W/74, 8 December 1998, para. 7. See also Mathew, 56, 89.
3 Mathew, 53.
4 Bronckers & Larouche, in: Macrory et al. (eds), 989, 992.
given the continuing regulatory reforms and technological developments. The Members wanted to extend negotiations on basic telecommunications beyond the Uruguay Round. The Members were not sure, however, whether the negotiations would lead to commitments from all Members with major telecommunications markets. The Annex on Negotiations on Basic Telecommunications (Annex NBTel) was drafted to allay such concerns.

B. Temporary Exemption from MFN Obligation

MFN is one of the most fundamental obligations under the GATS. Even though it is possible to schedule some exemptions to the MFN obligations, this could be done only before the entry into force of the WTO Agreement or today only upon accession by a new Member and such exemptions should, in principle, not exceed 10 years. Pursuant to the Annex on Article II Exemptions, if a Member wants to schedule any new exemptions after the WTO Agreement entered into force, it can only do so after obtaining a waiver from the WTO (Art. IX:3 WTO Agreement). This is very difficult in practice as such waiver would require approval from three-quarters of the whole membership. As the negotiations on basic telecommunications continued until after the entry into force of the WTO Agreement, however, a waiver would have been needed in the absence of any other special arrangements.

In this scenario, the Annex NBTel provided a special arrangement. Under this Annex, the MFN obligation and the Annex on Article II Exemptions permitting MFN exemptions under the named conditions were suspended for basic telecommunications until the implementation of the results of the negotiations or, should the negotiations not succeed, until the time when the Negotiating Group on Basic Telecommunications (NGBT) issued its final report. Thus, Members could still file exemptions to Art. II until the end of the negotiations. From that time on, the commitments had to be applied on an MFN basis, unless a Member had decided to list an exemption for any measures related to basic telecommunications.

This suspension did not apply to any specific commitment on basic telecommunications which was inscribed in a Member’s Schedule at the conclusion of the Uruguay Round. This probably in part explains the

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5 Mathew, at 53–54.
6 Bronckers & Larouche, in: Macrory et al. (eds), 989, 993.
7 See Wolfrum, Annex on Article II Exemptions, para. 1.
8 See Wolfrum, Max Planck CWTL, Vol. 2, Article IX WTO Agreement, para. 18.
9 Bronckers & Larouche, in: Macrory et al. (eds), 989, 993.